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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/753,307
Filing Date: December 29, 2000
Appellant(s): DOTY ET AL.

Timothy E. Murphy
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/11/08 appealing from the Office action mailed 1/03/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,205,557	Chong et al.	03-2001
6,976,062	Denby et al.	12-2005
2002/0101605	Zeck	08-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. Claims 1-4, 6, 7, and 9-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chong et al. (U. S. 6,205,557) in view of Denby et al (US 6,976,062).

Regarding claims 1 and 9, Chong teaches a method and a computer-readable medium for switching active calls between "entities" (Fig.3, server 140 and server 141 of database 103) on a network device (Fig. 2, item 103), the method comprising:

collecting information about a current call on the first processor while the current call is being processed by a first entity (Fig. 3, server 140 and col. 5, lines 7-16), initializing a second processor (Fig. 3, server 141) residing in the network device with the first processor (Col. 5, lines 22-23) with the information while the current call is being processed on the first processor, switching the current call from the first processor to the second processor; releasing the first processor from further processing of the call, and repeating the switching of call from the first processor until the first processor is free for maintenance (Col. 5, lines 18-19 and lines).

Chong does not teach determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls. However, Denby teaches determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls (See Col. 1, lines 64- Col. 2, lines 46).

Denby teaches the automated software upgrade utility allows a customer, product supplier or software vendor to upgrade the operating system, firmware, applications and data files on any product. The upgrade utility may reside with the product supplier and periodically locate remote products and perform the upgrade process. Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Denby into Chong's system in order to determine that an upgrade time has arrived. When the detection method in Chong is applied earlier as an upgrade (i.e., apply before the processor fails), then all calls that are transferred will also include all active calls at the time the second server is being initialized. It is extremely old and well known in the art of telephony (and other arts) that when a unit needs upgrading, other unit(s) should "take over" any function(s) of the unit to be upgraded. This is well known and represents simple common sense.

Regarding claims 2-4 and 15-18, Chong teaches the processors are digital signal processors located within the same module, the processors are located in different modules located on the same card, and the processors are located on different cards in the network device (Fig.2, DB 103; Fig. 3, server 140 and 141; Fig. 4, processors 170 of 140 and 141).

Regarding claim 6, Chong further teaches initializing a second processor further comprises initiating a retrain sequence on the second entity (Col. 5, lines 22-30).

Regarding claim 7, Chong further teaches the information about a current call includes modulation (Col. 2, lines 43-44)

Regarding claims 10 and 11, Chong further teaches the computer-readable medium comprises a downloadable file and image file upload able into digital signal processor (Col. 6, lines 56-67).

Regarding claims 12 and 14, Chong further teaches a network device, comprising: at least two means for handling active calls residing in the network device (fig.3, item server 140 and server 141 of database 103 and Fig. 1, switching network 100), a means for connecting the means for handling active calls with means for transmitting phone calls (col. 5, lines 16-19); a means for switching active calls from a first processing means for handling active calls to another processing means for handling active calls without interruption, thereby eliminating any active calls on the first means for handling active calls and freeing the first processing means for maintenance (Col. 5, Lines 23-32 and Col. 1, Lines 5-10).

Chong does not teach a means for determining that a time has been reached for an upgrade to a first processing mean that is actively handling calls. However Denby teaches a means for determining that a time has been reached for an upgrade to a first processing mean that is actively handling calls (See Col. 1, lines 64- Col. 2, lines 46). Denby teaches the automated software upgrade utility allows a customer, product

supplier or software vendor to upgrade the operating system, firmware, applications and data files on any product. The upgrade utility may reside with the product supplier and periodically locate remote products and perform the upgrade process. Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Denby into Chong's system in order to determine that an upgrade time has arrived. When the detection method in Chong is applied earlier as an upgrade (i.e., apply before the processor fails), then all calls that are transferred will also include all active calls at the time the second server is being initialized. It is extremely obvious and simple to understand that it depends on when the detection method may be applied, before or after the processor fails in order to provide maintenance/upgrade or repair. Selecting one of the above two available and known options does not require ingenuity and does not rise to the level of patentability.

Regarding claim 13, Chong further teaches the device of claim 10 wherein the controller is part of a processor located on one of the entities (Fig. 2, item 103).

Regarding claim 19, Chong further teaches the means for switching active calls further comprises a controller (Fig. 2, item 103).

2. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chong et al. (U. S. 6,205,557) in view of Denby et al (US 6,976,062) and further in view of Zeck (US 2002/0101605).

Regarding claims 5 and 8, Chong does not teach copying compression dictionary tables from the first entity and loading compression tables in the second entity. However, Zeck teaches copying compression dictionary tables from a first entity and loading compression tables in a second entity (See Paragraph 24 and 25). Zeck teaches a method for compressing and decompressing electronic documents, with improved compression and reduced history memory size requirements. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the dictionary compression technique, as taught by zeck, into Chong's system in order to compress and decompress data while transmission to have larger volume of data. The advantages using compression are old and well known.

Chong does not teach the information about a current call includes country code. However, each country uses different carriers, thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a country code to verify what type of carrier that country uses. Information about country code is old and well know in telecommunications systems.

(10) Response to Argument

Appellant argues (Brief, page 6) that Chong does not teach the claimed feature of determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls. However, this feature is taught by Denby. The Denby reference teaches determining that a time has been reached for an upgrade

of firmware on a first processor that is still actively handling calls (See Col. 1, lines 64-Col. 2, lines 46). Examiner respectfully submits that Chong teaches determining that a first processor has failed (Col. 3, lines 11-14). The claimed method determines that a processor needs maintenance or repair. Thus, it would have been obvious to one of ordinary skill in the art at the time of invention was made to use chong's system to determine that an upgrade time has arrived, as suggested by Denby. When the detection method in Chong is applied earlier (i.e., apply as un upgrade before the processor has failed), then all calls that are transferred will also include all active calls at the time the second server is being initialized. It is extremely old and well known in the art of telephony (and other arts) that when a unit needs upgrading, other unit(s) should "take over" any function(s) of the unit to be upgraded. For example, when a bookshelf is to be repaired/upgraded (e.g., painted), books that are on it should be moved to another bookshelf. Thus, in Chong, when active call server 140 fails (or to be upgraded/serviced), it would have been obvious to move/switch the active calls to server 141. The capability of doing so is clearly taught by Chong. Upgrading units of any system is also a well known feature. Thus, the "difference" between Chong and the claims does not rise to the level of patentability.

Appellant argues (Brief, pages 12) that the combination of Chong and Denby does not teach processors being located within the same module (Claim 2), in different modules on the same card (Claim 3) or on different cards in the network device (claim 4). Examiner respectfully submits that data base 103 in chong's system is a complex processor that manages and analyzes call information. The database 103 includes a

plurality of interface servers, an active call server, and a back up call server. Thus, it is notoriously old and well known in the call center art that the database 103 also includes processors, modules and cards. The exact location of the processor is not believed to be critical and may obviously be located in many suitable locations.

Appellant argues (Brief, pages 7 -13) that the proposed combination of Chong and Denby is improper. Examiner respectfully submits that Denby teaches that the automated software upgrade utility allows a customer, product supplier or software vendor to upgrade the operating system, firmware, applications and data files on any product. The upgrade utility may reside with the product supplier and periodically locate remote products and perform the upgrade process. Denby teaches automated upgrading process and periodically query the product supplier for firmware upgrades. Denby is the teaching or secondary reference, and it does not have to be bodily incorporated in Chong (the primary reference). When the detection in Chong is performed periodically, as taught by Denby, then the active call server is still in good working condition when a second processor (or standby processor) is initialized and transferring all calls to second processor will happen without any problems. Simply stated, when a unit needs upgrading, another unit should take over any function(s) of the unit to be upgraded. Therefore, the proposed combination of Chong and Denby is proper.

Appellant argues (Brief, pages 16-17) that the combination of Chong, Denby and Zeck does not teach copying compression dictionary tables from the first entity and loading compression tables in a second entity. Examiner respectfully submits that

Chong does not teach copying compression dictionary tables from the first entity and loading compression tables in the second entity. However, to achieve a high data rate, data compression has always been introduced. Thus, it is old and well known in the telecommunication system at the time the invention was made to compress and decompress data while transmission to have larger volume of data. Zech teaches dictionary compression method. Chong teaches transferring calls from first entity to second entity. Thus, the combination of chong and Zeck does teach compressing and decompressing data while transmission to have larger volume of data.

Appellant further argues (Brief, page 17) that the combination of Chong, Denby and Zech does not teach the information about a current call includes country code (Claim 8). Examiner respectfully submits that each country uses different carriers, thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to include type of country code to verify what type of carrier that country uses. Information about country code is old and well known in telecommunication system.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Karen L Le/

Examiner, Art Unit 2614

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